

03-04. 17.02.2022
Ct. No.06
Tanmoy

**M.A.T. 401 of 2021
With
IA No: C.A.N. 1 of 2021**

**Nandita Mondal
-Versus-
Goutam Ghosh & Ors.**

With

**M.A.T. 419 of 2021
With
I.A. No: C.A.N. 1 of 2021**

(Through Video Conference)

Mr. Biswaroop Bhattacharyya, Adv.,
Mr. Madan Mohan Roy, Adv.

...for the appellant.

Mr. Debabrata Saha Roy, Adv.,
Mr. Indranath Mitra, Adv.,
Mr. Neil Basu, Adv.

...for the writ petitioner/respondent no.1.

Mr. Rajarshi Basu, Adv.,
Mr. S.T. Mina, Adv.

...for the State respondents.

Mr. Soumik Ganguly, Adv.

...for the *Zilla Parishad*.

By consent of the parties, both the appeals and the connected applications are taken up together for hearing.

M.A.T. 401 of 2021 is an appeal against an *interim* order dated February 25, 2021 passed in W.P.A. 3601 of 2021.

M.A.T. 419 of 2021 is an appeal against yet another *interim* order dated March 4, 2021 passed in the same writ petition. The writ petition is pending before the learned Single Judge.

The writ petitioner, respondent no.1 herein, approached the learned Single Judge with the apprehension that in spite of he having scored the highest mark in the written examination, he will not be given promotion and instead somebody else will be appointed in the promotional post. The present appellant was not a party to the writ petition. During the pendency of the writ petition, on February 22, 2021, the present appellant was appointed in the promotional post in question.

The learned Single Judge passed an order on February 25, 2021 granting liberty to the writ petitioner to add the present appellant as a respondent in the writ petition. The operative portion of the order reads as follows:

“This Court is, prima facie, satisfied that appointment of Smt. Nandita Mondal is contrary to the rules. The promotion of Smt. Nandita Mondal shall remain stayed for a period of fifteen days from date.

This matter shall be listed on 4th March, 2021 as “Specially Fixed Matter.”

The matter appeared again before the learned Judge on March 4, 2021. The learned Judge recorded the writ petitioner’s submission that he had tried to

serve the present appellant, but the envelope had come back with the postal endorsement, “undelivered”. The learned Judge then passed the following order:

“In view of the above, the order dated February 25, 2021 shall remain stayed until disposal of the writ application.

The petitioner shall be given promotion to the post of Head Assistant.

The petitioner shall serve second notice on the added respondents at any other address including the office address.

Let affidavit-in-opposition be filed within a period of 3 weeks from date. Reply, if any, be filed within a week thereafter.

Liberty to mention for hearing after completion of pleadings.”

As aforesaid, two separate appeals have been preferred from the orders dated February 25, 2021 and March 4, 2021 by the appellant who had been appointed in the promotional post on February 22, 2021.

The short grievance made by the appellant is that her appointment in the promotional post was stayed without granting her an opportunity of hearing. This was in breach of the principles of natural justice. Further, final relief was granted to the writ petitioner at the *interim* stage by directing his appointment in the concerned promotional post. The appellant says that she only prays for an opportunity to place her case before the learned Single Judge.

We have also heard learned Counsel for the writ petitioner/respondent no.1, learned Counsel for the *Zilla Parishad* and the State. The writ petitioner says that attempt was made to serve the writ petition on the present appellant. The parcel came back undelivered. She in fact, refused service. She chose not to appear before the learned Single Judge. She cannot complain of breach of the principles of natural justice. Her appointment was in breach of the applicable rules. The learned Judge rightly stayed her appointment. No interference with the order of the learned Single Judge is called for.

We have given our anxious consideration to the facts and circumstances of the case. We are of the view that in this case, principles of natural justice have been breached. The present appellant should have been heard before her appointment was stayed. There was no postal endorsement that the appellant had refused to accept service. The endorsement was, "Undelivered". Non-delivery could have been for various reasons.

The impugned orders, in our opinion, ought not to have been passed without granting a further opportunity to the appellant herein. Had the Court been satisfied that in spite of the present appellant having received notice, she chose to stay away from Court, then that would have been a different matter. But that is not the case.

Solely on the ground of non-observance of the principles of natural justice, the orders under appeal are set aside and the matter is remanded to the learned Single Judge having determination in the matter to decide the writ petition on merits after giving an opportunity to the present appellant to file affidavit.

We are also of the *prima facie* view that the writ petitioner ought not to have been granted appointment at the *interim* stage as the same, in our opinion, goes against service jurisprudence inasmuch as, final relief is normally not to be granted in cases as the present one, at the *interim* stage. We, however, clarify that neither the present appellant, nor the writ petitioner shall work in the concerned post till the learned Single Judge decides the writ application. In other words, the appointment of the present appellant in the concerned post shall remain stayed till disposal of the writ application and shall abide by the final decision in the writ petition. The appointment of the writ petitioner shall also remain stayed till disposal of the writ application and shall abide by the final decision in the writ petition.

As prayed for, leave is granted to the writ petitioner to file a supplementary affidavit before the learned Single Judge within a week from date to bring on record subsequent developments. Composite affidavits-in-opposition be filed by the respondents

within a week thereafter. Affidavit-in-reply be filed by the writ petitioner within a week after that.

Parties will be at liberty to mention the matter before the learned Single Judge after completion of affidavits, or after time to file affidavits expires.

Since the concerned post will remain vacant, we request the learned Single Judge to give some precedence to this matter to the extent the business of the Court may permit.

The appeal being M.A.T. 401 of 2021 with IA No: C.A.N. 1 of 2021 and the appeal being M.A.T. 419 of 2021 with IA No: C.A.N. 1 of 2021, are accordingly disposed of.

Let urgent photostat certified copies of this order, if applied for, be supplied to learned Advocates for the parties upon compliance with all usual formalities.

(Kausik Chanda, J.)

(Arijit Banerjee, J.)